[Police Code - Paid Parental Leave Ordinance]

Ordinance amending the Police Code to make technical amendments to the Paid Parental Leave Ordinance consistent with its original intent.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italics Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Police Code is hereby amended by revising Sections 3300H.2, 3300H.3, and 3300H.4 of Article 33H, to read as follows:

SEC. 3300H.2. FINDINGS.

* * * *

(b) As of January 2016, workers eligible for California Paid Family Leave can take up to six weeks of paid time off at 55% of their weekly wages up to a maximum weekly benefit amount to bond with a new child or care for a seriously ill family member. The weekly benefit amount is determined by using the employee’s highest-earning calendar quarter during an approximately 12-month base period. As of January 2016, the maximum weekly benefit amount is $1,129. To qualify for this maximum weekly benefit amount, an individual must earn at least $26,070.92 in a calendar quarter during the base period. In April 2016, The State Legislature is considering enacted legislation that will extend the number of weeks of paid time-off and increase the weekly benefit amount wage replacement rate to 70% for lower-income workers and 60% for higher-income workers, for periods of leave commencing after January 1, 2018.
but before January 1, 2022, but as of the enactment of this Article 33H, the state legislation had not been passed.

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(i) This Article 33H is intended to supplement the California Paid Family Leave partial wage replacement by providing compensation that, in combination with the California Paid Family Leave payment, will total 100% of an employee’s weekly salary, subject to a weekly maximum benefit amount, during the six-week leave period, to help ensure that concern over loss of income does not preclude parents in San Francisco from bonding with their new child.

SEC. 3300H.3. DEFINITIONS.

* * * *

“Covered Employee” means any person, including but not limited to part-time and temporary employees, who is employed by a Covered Employer (1) who commenced employment with the Covered Employer at least 180 days prior to the start of the leave period, (2) who performs at least eight hours of work per week for the employer within the geographic boundaries of the City, (3) at least 40% of whose total weekly hours worked for the employer are within the geographic boundaries of the City, and (4) who is eligible to receive paid family leave compensation from the State of California under the California Paid Family Leave law for the purpose of bonding with a new child. Where a person’s weekly work hours fluctuate from week to week, the Agency shall determine whether the person meets the eight-hour and/or 40% threshold requirements in the preceding sentence by using an average of the person’s weekly hours worked for the Covered Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately preceding the start of the person’s California Paid Family Leave period. If the person was on unpaid leave during any of the aforementioned pay periods, such pay period(s) shall not be
counted towards the average referenced in the preceding sentence; rather, the Agency shall
consider additional earlier corresponding pay periods for that person in order to satisfy the
above designated number of pay periods, but in no case shall the Agency, in calculating the
average, consider pay periods earlier than 26 weeks prior to the California Paid Family Leave
period.

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SEC. 3300H.4. SUPPLEMENTAL PAID PARENTAL LEAVE.

(a) Applicability. This Article 33H applies to Covered Employees who are receiving
California Paid Family Leave benefits for the purpose of New Child Bonding.

(b) Supplemental Compensation.

(1) General.

(A) Except as stated in subsection (b)(2), when a Covered Employee
receives California Paid Family Leave compensation for the purpose of New Child Bonding, a
Covered Employer shall, during the leave period, supplement the California Paid Family Leave
weekly benefit amount that the employee is receiving by paying the employee Supplemental
Compensation in an amount such that the total of the California Paid Family Leave
compensation the employee is receiving and the Supplemental Compensation provides, but
does not exceed, 100% of the employee’s current normal gross weekly wage.

(B) If the Covered Employee’s weekly wage fluctuates, the employee’s
normal gross weekly wage shall be calculated based on an average of the employee’s weekly
earnings from the Covered Employer during the three monthly pay periods, six bi-weekly or
semi-monthly pay periods, or 12 weekly pay periods immediately preceding the start of the
employee’s California Paid Family Leave period. If the employee was on unpaid or partially
paid leave during any of the aforementioned pay periods, such pay period(s) shall not be
counted towards the average referenced in the preceding sentence; rather, the average shall
be calculated using additional earlier corresponding pay periods in order to satisfy the above
designated number of pay periods, but in no case shall pay periods earlier than 26 weeks
prior to the California Paid Family Leave period be considered. Notwithstanding the preceding
sentence, if the Covered Employee’s weekly wage fluctuates and the employee has worked for the
Covered Employer for less than 26 weeks, the weekly wage shall be calculated based on an average of
the employee’s weekly earnings for the entire period of employment to date.

(C) If the California Paid Family Leave weekly benefit amount that the
Covered Employee is receiving from the State is based on earnings from a calendar quarter
during which the employee did not work for the Covered Employer, or during which the
employee earned a higher weekly wage from the Covered Employer than the employee is
receiving at the time of his or her leave, the Supplemental Compensation amount shall be
calculated to provide 100% of the employee’s normal gross weekly wage in his or her current
position; provided, however, that reducing a Covered Employee’s wages during the leave
period or within 90 days of the employee’s having notified the Covered Employer of his or her
intent to apply for and/or use made a request or application for California Paid Family Leave shall
raise a rebuttable presumption that such wage reduction was made to reduce the Covered
Employer’s Supplemental Compensation obligations under this Section 3300H.4. Unless the
Covered Employer rebuts the presumption with clear and convincing evidence that the
reduction was solely for a reason other than reducing its obligation to pay Supplemental
Compensation, the employer shall be obligated to pay Supplemental Compensation during
the leave period based on the employee’s prior wage rate.

(D) Multiple Employers.

(i) Where the Covered Employee works for more than one
employer, the Supplemental Compensation amount shall be apportioned between or among
the Covered Employers based on the percentage of the Employee’s total gross weekly wages
received from each employer. For example, if the Employee earns $800 per week from
Covered Employer A, and $200 per week from Covered Employer B for a combined total of
$1,000, Employer A shall pay 80% of the Supplemental Compensation amount and Employer
B shall pay 20% of the Supplemental Compensation amount. If the Employee's weekly wage
for a given Employer fluctuates, the percentage referenced in this subsection shall be
calculated by averaging the employee’s weekly wages earned from the Employer during the
three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay
periods immediately preceding the leave period. If the employee was on unpaid or partially
paid leave during any of the aforementioned pay periods, such pay period(s) shall not be
counted towards the average referenced in the preceding sentence; rather, the average shall
be calculated using additional earlier corresponding pay periods in order to satisfy the above
designated number of pay periods, but in no case shall pay periods earlier than 26 weeks
prior to the California Paid Family Leave period be considered.

* * * *

(iii) In cases of multiple employers, the Covered Employee shall, as a
precondition of receiving Supplemental Compensation, provide the Covered Employer(s) with
both (1) a copy of the employee’s Notice of Computation of California Paid Family Leave Benefits from
the State or other legally authorized statement, and (2) information pertaining to wages received
from all employers during the 90 days prior to the leave period on a form prepared by the
Agency and signed by the employee under penalty of perjury. A Covered Employee’s failure
to comply with this requirement shall relieve the Covered Employer(s) of their obligation to
provide the employee with Supplemental Compensation.

(3) Termination During Leave Period. A Covered Employer's obligation to
provide Supplemental Compensation under this Section 3300H.4 applies only during the period
when the Covered Employee is eligible for and is receiving California Paid Family Leave
benefits for New Child Bonding; provided, however, that if a Covered Employer terminates a
Covered Employee during the leave period, the employer’s obligation to pay Supplemental
Compensation shall continue for the remainder of the California Paid Family Leave period the
Covered Employee is receiving California Paid Family Leave benefits.

(4) Termination Prior to Leave Period. Terminating a Covered Employee
prior to the employee’s leave period but within 90 days of the employee’s having notified the
Covered Employer of his or her intent to apply for and/or use made a request or application for
California Paid Family Leave shall raise a rebuttable presumption that such termination was
taken to avoid the Covered Employer’s Supplemental Compensation obligations under this
Section 3300H.4. Unless the Covered Employer rebuts the presumption with clear and
convincing evidence that the termination was solely for a reason other than avoidance of its
obligation to pay Supplemental Compensation, the employer shall be obligated to pay the
terminated employee Supplemental Compensation during the leave period.

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(c) Integration/Coordination of Benefits. In accordance with California
Unemployment Insurance Code Section 2656, a Covered Employee who is receiving
California Paid Family Leave benefits may not receive Supplemental Compensation under this
Article 33H which would result in the employee’s receiving total compensation while on paid
parental leave that is greater than the employee’s normal gross weekly wages. As a
precondition of receiving Supplemental Compensation, a Covered Employee must either (1)
provide the Covered Employer with a copy of the employee’s Notice of Computation of
California Paid Family Leave Benefits from the State or other legally authorized statement, or
(2) at the time of applying for California Paid Family Leave, provide the State with written
authorization to disclose the weekly benefit amount to the employer so that the Covered
Employer may request and obtain that information from the State. A Covered Employee’s failure to
comply with this requirement shall relieve the Covered Employer of its obligation to provide
the employee with Supplemental Compensation.

Section 2. Effective Date. This ordinance shall become effective 30 days after
enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
of Supervisors overrides the Mayor’s veto of the ordinance.

Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the Police
Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
additions, and Board amendment deletions in accordance with the “Note” that appears under the
official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: [Signature]
FRANCESCA GESSNER
Deputy City Attorney

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File Number: 160719  Date Passed: September 06, 2016

Ordinance amending the Police Code to make technical amendments to the Paid Parental Leave Ordinance consistent with its original intent.

July 27, 2016 Budget and Finance Sub-Committee - RECOMMENDED

August 02, 2016 Board of Supervisors - PASSED, ON FIRST READING
Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

September 06, 2016 Board of Supervisors - FINALLY PASSED
Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

File No. 160719

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 9/6/2016 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved 9/14/2016